

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT M. McCAFFERY,)
)
) Civil Action No. 05-40146-RWZ
Pro se Petitioner,)
)
v.)
)
DAVID L. WINN,)
)
)
Respondent.)

**RESPONDENT'S MOTION FOR
RECONSIDERATION AND RENEWED MOTION TO DISMISS**

The Respondent David L. Winn, Warden, Federal Medical Center Devens, through his undersigned counsel, hereby moves this Court for reconsideration of its November 8, 2005, Order denying the Respondent's motion to dismiss. As explained in the accompanying memorandum of law, the Court lacks authority to stay this case to allow the Petitioner an opportunity to exhaust his administrative remedies.

The Respondent further renews his motion to dismiss on the ground that the

Petitioner has not exhausted his administrative remedies. The Court should dismiss the case without prejudice.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
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(617) 748-3272

Dated: January 31, 2006

CERTIFICATION

The undersigned counsel states that he has not conferred with the pro se petitioner because LR 7.1(a)(2) requires "counsel" to confer and therefore does not apply when a party proceeds pro se. To the extent LR 7.1(a)(2) applies, it is requested compliance be excused here.

/s/ George B. Henderson, II
George B. Henderson, II

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the pro se Petitioner on January 31, 2006, by regular mail, postage prepaid, addressed to: Robert McCaffery, Reg. # 57977-066, FMC Devens, P.O. Box 880, Ayer, MA 01432.

/s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney